

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

ROBERT B. PHELPS)
APPLN NO.: 10/636,125) GROUP ART UNIT: 3687
CONFIRMATION NO.: 1568)
FILED: AUGUST 7, 2003) EXAMINER: VANEL FRENEL
METHOD OF ENHANCING VALUE)
OF PENSION PLAN ASSETS)

CERTIFICATE OF SUBMISSION

I hereby certify that, in the course of ordinary business, this paper (along with any referred to as being attached or enclosed) is being submitted to the United States Patent and Trademark Office via EFS-Web on the date indicated below.

Date: February 3, 2010

Signed: Jane L. Hartdegen
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Commissioner for Patents
PO Box 1450
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Sir:

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705(b)

Applicant hereby applies for patent term adjustment in view of the calculation set forth in the Notice of Allowance mailed in the above application on November 3, 2009. Deposit account authorization for payment of the requisite fee for this application under 37 CFR § 1.18(e) is submitted herewith. This application is being filed concurrently with submission of the issue fee payment for this application. In furtherance of this application, Applicant represents as follows:

1. As a preliminary matter, it is noted that the calculation in this application appears to have been made prior to the Federal Circuit's ruling in *Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir. Jan. 7, 2010), regarding the Overlapping Delay Provision of 35 U.S.C. § 154(b)(2)(A). Recalculation is being requested, for amongst other reasons, to ensure that the calculation is made in accordance with the *Wyeth* decision.

2. As required by 37 C.F.R. § 1.705(b)(2), a statement of the facts involved is specified below:

(a) The correct Patent Term Adjustment is believed to be 256 days, not 80 days. The basis/bases under 37 C.F.R. § 1.702 for the adjustment is/are 37 CFR §§ 1.702(a)(1) and 1.702(a)(2), as well as 1.702(b)(1) and 1.702(b)(4).

(b) The relevant dates as specified in 37 CFR §§ 1.703(a) through (e) for which an adjustment is sought and the adjustment as specified in 37 CFR § 1.703(f) to which the patent is entitled are:

(i) The Office's initial calculation in the Notice of Allowance correctly credits Applicant with 81 additional days under 37 CFR 1.703(a)(1), due to delay by the Office in rendering an Action or Notice of Allowance within 14 months following the application's filing date of August 7, 2003. An Office Action was first mailed on December 27, 2004.

(ii) The Office's initial calculation in the Notice of Allowance correctly credits Applicant with an additional 259 days under 37 CFR 1.703(a)(2), due to delay by the Office in rendering an action within four (4) months following Applicant's reply filed on May 27, 2005. The Office rendered its action on June 13, 2006.

(iii) The Office failed to take into account its own delays in issuing the patent after 3 years following the initial filing date of August 7, 2003, as required by Rule 1.702(b). The 3-year date from the filing date was August 7, 2006, after which there will be a delay to the projected issue date (May 11, 2010, assuming the issue fee is paid and the patent issues on the Tuesday before 28 weeks following the mail date of the Notice of Allowance, as stated in the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) mailed November 3, 2009) of 1,373 additional days. However, under Rule 1.702(b)(4), this 1,373 day period is reduced by the number of days in said period counted from the date the Notice of Appeal was filed on July 28, 2006, until the next Examiner Office Action mailed on May 18, 2007 (294 days), less the number of days (10) in this period which occurred prior to the period beyond the 3-year date on August 7, 2006, for a reduction of 284 days. In addition, under Rule 1.702(b)(1), the period of delay following August 7, 2006 through the projected issue date of May 11, 2010, should further be reduced

by the number of days following the filing of the Request for Continued Examination on February 28, 2008 until the projected issue date of May 11, 2010, for a further reduction of 802 days. Thus, the total adjustment due under Rule 1.702(b) is 1,373 – 284 – 802 = 287 additional days.

The period of adjustment under Rules 1.703(a) and (b) is thus 81 + 259 + 287 = 627 additional days.

(c) The circumstances during the prosecution of this application that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in 37 CFR § 1.704, include the following:

- (i) The Office properly reduced the term adjustment by 61 reducing days for the period following three (3) months after the Non-final Action mailed December 27, 2004 through the filing of the Response after Non-final Action on May 27, 2005 (per 37 CFR § 1.704(b)).
- (ii) The Office properly reduced the term adjustment by 49 reducing days for the period following the Response after Non-final Action on May 27, 2005 through the date the Information Disclosure Statement was filed on July 15, 2005 (per 37 CFR § 1.704(c)(8)).
- (iii) The Office properly reduced the term adjustment by 34 reducing days for the period following three (3) months after the Non-final Rejection mailed May 18, 2007 through the filing of the Response after Non-final Action on September 21, 2007 (per 37 CFR § 1.704(b)).
- (iv) The Office properly reduced the term adjustment by 72 reducing days for the period following three (3) months after the Non-final Rejection mailed April 8, 2008 through the filing of the Response after Non-final Action on September 18, 2008 (per 37 CFR § 1.704(b)).
- (v) The Office properly reduced the term adjustment by 95 reducing days for the period following the Response after Non-final Action on September 18, 2008 through the date the Information Disclosure Statement was filed on December 22, 2008 (per 37 CFR § 1.704(c)(8)).
- (vi) The Office properly reduced the term adjustment by 60 reducing days for the period following three (3) months after the Final Rejection mailed January 5, 2009 through the filing of the Request for Continued Examination on June 4, 2009 (per 37 CFR § 1.704(b)).

The total reduction days under Rule 1.704 is 371 days, as properly calculated by the PTO

according to the PAIR records. Thus, the net term adjustment calculation should be 627 days under Rule 1.702 – 371 days under Rule 1.704 = 256 net days. Because the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) mailed in this application on November 3, 2009 indicates a calculated term adjustment of only 80 days, rather than 256 days, the calculation is in error and should be reconsidered and revised accordingly.

(d) The patent to be granted on this application is not subject to a Terminal Disclaimer.

In view of all of the foregoing, favorable action upon this application is solicited.

Respectfully submitted,

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